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OFFICE OF PETITIONS

In re Application of
Anderson, et al.
Application No. 10/022,926
Filed: December 18, 2001
Docket No.: 5-13-9-12
For: METHODS AND APPARATUS FOR
AUTOMATED MONITORING AND ACTION
TAKING BASED ON DECISION SUPPORT
MECHANISM

DECISION REFUSING STATUS
UNDER 37 CFR 1.47(a)

This decision is in response to the petition under 37 CFR 1.47(a), filed May 15, 2002.

The petition is **DISMISSED**.

Rule 47 applicant is given TWO MONTHS from the mailing date of this decision to reply, correcting the below-noted deficiencies. Any reply should be entitled "Request for Reconsideration of Petition under 37 CFR 1.47(a)," and should only address the deficiencies noted below, except that the reply may include an oath or declaration executed by the non-signing inventor. Failure to respond will result in abandonment of the application. Any extensions of time will be governed by 37 CFR 1.136(a).

The above-identified application was filed December 18, 2001 without an executed oath or declaration and naming Gregory Anderson, Vinod Anupam, Richard B. Hull, and Bharat Kumar as joint inventors. Accordingly, on January 15, 2002, a "Notice to File Missing Parts of Nonprovisional Application" was mailed, requiring an executed oath or declaration and a surcharge.

A grantable petition under 37 CFR 1.47(a) requires: (1) proof that the non-signing inventor cannot be reached or refuses to sign the oath or declaration after having been presented with the application papers (specification, claims, drawings, oath or declaration); (2) an acceptable oath or declaration in compliance with 35 USC 115 and 116; (3) the petition fee; and (4) a statement of the last known address of the non-signing inventor.

The petition lacks requirement (1) stated above. The petition lacks sufficient evidence that the non-signing inventor cannot be reached, was ever presented with a copy of the application papers (specification, claims, drawings, oath or declaration), or, having been presented with the application papers, refused to sign the oath or declaration.

William E. Lewis states that a declaration and power of attorney were forwarded to inventor Richard B. Hull with instruction for Richard B. Hull to coordinate the execution of the declaration by the inventors. William E. Lewis further states that on two

separate occasions, telephone messages were left for inventor Gregory Anderson to sign the declaration and that to date, inventor Gregory Anderson has not signed the declaration.

Richard B. Hull states that the declaration and power of attorney were forwarded to inventor Gregory Anderson on or about March 8, 2002. Richard B. Hull further states that Gregory Anderson indicated he would not sign the declaration due to his "continuing concern over not getting appropriate recognition of his contributions to the Application from his management at Avaya."

Petitioner is advised that before a refusal to sign an oath or declaration can be alleged, it must be demonstrated that a *bona fide* effort has been made to present a copy of the application papers (specification, claims, drawings, and oath or declaration) to the non-signing inventor. A copy of the application papers should be sent to the last known address of the non-signing inventor, or, if the non-signing inventor is represented by counsel, to the address of the non-signing inventor's attorney. See, MPEP 409.03(d). Petitioner has failed to establish that the inventor received the application papers and thereafter refused to sign the declaration.

Any renewed petition must be supported by evidence that the inventors were presented with a copy of the application papers. In particular, the renewed petition should set forth the manner in which the application papers were presented to the non-signing inventors. Petitioner may wish to provide the Office with copies of dated cover letters and, if available, copies of mailing receipts as evidence that the non-signing inventor was presented with a copy of the application papers. If, after having been presented with the application papers, an oral refusal is made by a non-signing inventor, this fact along with the time and place of the refusal must be stated in an affidavit or declaration signed by the person to whom the refusal was made. Any written refusal to execute the oath or declaration by an inventor should likewise be submitted. Petitioner's attention is directed to MPEP 409.03(d) for further information on the presumptive evidence required for accordance of status under 37 CFR 1.47.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents
 Box DAC
 Washington, DC 20231

By FAX: (703) 308-6916
 Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite 3C23
 2201 S. Clark Place
 Arlington, VA

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Telephone inquiries related to this decision may be directed to the undersigned at (703) 305-0310.



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